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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ERICK FRANCISCO CUBIAS,

Defendant and Appellant.

E052986

(Super.Ct.No. SWF10000477)

OPINION

APPEAL from the Superior Court of Riverside County. Mark Mandio, Judge.

Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton, and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Erick Francisco Cubias (defendant), appeals from the judgment entered after a jury found him guilty of two counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), found true the allegation in connection with one of those counts that defendant inflicted great bodily injury on the victim within the meaning of Penal Code former section 12022.7, subdivision (a), and the trial court sentenced him to serve a total term of six years in state prison.

Defendant challenges the judgment, first, on the ground that the trial court erred when it purportedly declined defendant's offer to stipulate to the great bodily injury allegation in order to prevent the prosecutor from presenting evidence on that allegation. Next, defendant contends the trial court deprived him of his constitutional right to present a defense by precluding defendant from presenting evidence of other stabbings that occurred during parties at the house where defendant stabbed the victims in this case. We conclude both contentions are meritless and therefore we will affirm the judgment.

FACTS

Resolution of the issues defendant raises in this appeal does not require a detailed recitation of the facts. It suffices to say that defendant was at a party and got into an altercation with a woman. During the altercation, defendant pulled a knife and stabbed the woman, Frosta S., in the throat, causing a three-inch gash. Defendant also stabbed a second woman, Antonette W., in the hand when she stepped in to break up the altercation.

DISCUSSION

1.

PHOTOGRAPH OF VICTIM

Although framed differently,¹ defendant challenges the trial court's exercise of discretion to allow the prosecutor to introduce into evidence a photograph that depicted the wound defendant inflicted when he stabbed Frosta S. in the throat. Defendant objected the photograph was too gruesome, and if necessary, he agreed to stipulate to the great bodily injury allegation in order to prevent the evidence from being presented to the jury. The trial court overruled defendant's objection and rejected the possibility of a stipulation after finding the photograph was relevant to prove facts other than the great bodily injury allegation. Defendant contends the trial court abused its discretion. We disagree.

A. Standard of Review

“[A]n appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the relative probativeness and prejudice of the evidence in question [citations]. Evidence is substantially more prejudicial than probative (see Evid. Code, § 352) if, broadly stated, it poses an intolerable ‘risk to the fairness of the proceedings or the reliability of the

¹ In his opening brief, defendant frames this issue as error resulting from the trial court not accepting his offer to stipulate to the great bodily injury allegation. Defendant did not in fact offer such a stipulation but instead only reluctantly acknowledged he was willing to stipulate to the enhancement when the trial court suggested that as an alternative to admitting the photograph into evidence.

outcome’ [citation].” (*People v. Waidla* (2000) 22 Cal.4th 690, 724.) On appeal, we will not disturb the trial court’s discretionary ruling “‘*except* on a showing that the court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

B. Analysis

Defendant’s contrary claim notwithstanding, the prosecution is not required to accept a stipulation to facts that are elements of the crime, nor does a defendant’s offer to stipulate to certain facts render those facts irrelevant. “Relevant evidence is that ‘having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of an action.’ (Evid. Code, § 210.) The concept of relevance is very broad [citation], encompassing evidence depicting the crime scene and injuries inflicted [citation], and that bearing on the defendant’s account of events and state of mind.” (*People v. Salcido* (2008) 44 Cal.4th 93, 147.) “In addition, the prosecution is not required to accept a stipulation “‘if the effect would be to deprive the state’s case of its persuasiveness and forcefulness,’” nor is it ‘obligated to present its case in the sanitized fashion suggested by the defense.’ [Citations.] The prosecutor need not stipulate to proof in place of photographic evidence. [Citation.]” (*Ibid.*)

The photograph of the wound defendant inflicted on Frosta S. was relevant not only to prove the great bodily injury allegation but also to prove defendant assaulted Frosta S. with a dangerous or deadly weapon as charged in count 1. As the trial court

instructed the jury, a deadly weapon is one that either is inherently deadly or dangerous or that is used in such a way that it is capable of causing and likely to cause great bodily injury or death. In addition, the photograph of the wound was relevant to the issue of self-defense and specifically whether defendant acted with only that amount of force necessary to defend himself against the danger Frosta S. posed. (*People v. Pinholster* (1992) 1 Cal.4th 865, 966.)

Although Frosta S. and other witnesses testified at trial and, among other things, described the wound defendant inflicted, the prosecutor was also permitted to present a photograph that depicted the actual injury. Simply put, a photograph of the wound has greater evidentiary value and weight than a description of the injury. (*People v. Price* (1991) 1 Cal.4th 324, 441; *People v. Mattson* (1990) 50 Cal.3d 826, 871.) The photograph in this case is gruesome but only because the injury defendant inflicted on Frosta S. is gruesome. The trial court weighed the probative value of that photograph against its potential for undue prejudice. We cannot say the trial court's decision to admit the photograph into evidence was an abuse of discretion.

Finally, even if we were to agree with defendant, and were to conclude the trial court abused its discretion, we nevertheless would conclude the purported error did not result in a miscarriage of justice. In the context of erroneously admitted evidence, a miscarriage of justice occurs when we are able to say, absent the erroneously admitted evidence, it is reasonably probable the jury would have reached a result more favorable to defendant. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Because various witnesses

described the injury defendant inflicted when he sliced Frosta S.'s throat with a knife, it is not reasonably probable the jury would have reached results more favorable to defendant on count 1 or the related great bodily injury enhancement if the photograph of that wound had not been admitted into evidence.

2.

EVIDENCE OF A PREVIOUS STABBING

During his questioning of Matthew Graham, the person who hosted the party where defendant committed the stabbings, defense counsel asked about another party Graham had “where somebody ended up stabbed.”² The prosecutor objected on the basis of relevance and after a hearing at which defense counsel argued the evidence was relevant to defendant’s self-defense claim, the trial court sustained the prosecutor’s relevance objection, and also found the evidence inadmissible under Evidence Code section 352. Defendant argues here as he did in the trial court that evidence of the previous stabbing was relevant to show his state of mind and thus to his claim of self-defense. We disagree.

A. Standard of Review

We review a trial court’s ruling that proffered evidence is irrelevant and that in any event the probative value is substantially outweighed by the potential for confusion

² Earlier, the trial court sustained the prosecutor’s relevance objection when defense counsel asked a witness if he knew about an earlier party where somebody had been stabbed.

and/or undue prejudice under the previously discussed abuse of discretion standard.

(*People v. Waidla*, *supra*, 22 Cal.4th at p. 724.)

B. Analysis

“To justify an act of self-defense for [an assault charge under Penal Code section 245], the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him. [Citation.]’ [Citation.] The threat of bodily injury must be imminent [citation], and ‘. . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.]’ [Citations.]” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064-1065.)

Defendant argues, as he did in the trial court, that he knew someone had been stabbed at one of Graham’s other parties and Graham testified that he tended to invite the same people to his parties. According to defendant, evidence of the prior stabbing goes to his state of mind at the time of the current stabbing and, therefore, was relevant to prove his claim of self-defense. We disagree.

Evidence that someone had been stabbed at one of Graham’s other parties arguably is relevant to the issue of reasonableness. As the Supreme Court has explained, “although the test is objective, reasonableness is determined from the point of view of a reasonable person in the defendant’s position. The jury must consider all the facts and circumstances it might “expect[] to operate on [defendant’s] mind” [Citation.]’ [Citation.]” (*People v. Minifie*, *supra*, 13 Cal.4th at p. 1065, quoting *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083.)

In order to be relevant to defendant's state of mind, the evidence had to show not only that Graham invited the same people to all of his parties but also that defendant knew that fact and as a result believed the person who committed the prior stabbing might be one of the two women with whom defendant was fighting. Defendant did not present evidence on that critical issue.

Moreover, even if there had been evidence to show that one or both of the victims had attended the party where the stabbing occurred, that fact standing alone would not establish the objective reasonableness of defendant's belief that one of them could have been the stabber. In other words, it is not objectively reasonable for defendant to believe that anyone who was at the party where the previous stabbing took place might have been the stabber. Because defendant could not establish even the foundational fact that the victims in this case had been at the party when the previous stabbing occurred, least of all connect them in some way to the actual stabbing, the evidence was not relevant to his state of mind. Therefore, we conclude the trial court did not abuse its discretion in excluding that evidence from trial.

Even if we were to conclude otherwise, the marginal probative value of the challenged evidence was substantially outweighed by its potential for prejudice and confusion such that the trial court properly exercised its discretion under Evidence Code section 352 to exclude the prior stabbing evidence.

For either or both of the reasons discussed, we reject defendant's claim that the trial court erroneously excluded evidence relevant to his claim of self-defense.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

RAMIREZ
P.J.

RICHLI
J.